

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

To: The Commission

**COMMENTS OF
THE UNIVERSITY OF NORTH CAROLINA OFFICE OF THE PRESIDENT
ON THE NOTICE OF PROPOSED RULEMAKING**

I. Introduction and Summary

The University of North Carolina (University) respectfully submits the following comments in response to the Further Notice of Proposed Rulemaking (NPRM) adopted in the above-captioned docket¹ and supports comments filed by the Higher Education Coalition, which seeks the exemption of institutions of higher education from the expanded provisions within the Communication Assistance for Law Enforcement Act (CALEA).

In a time of needed heightened security, the University of North Carolina continues to support policy measures that ensure the protection and safety of the public while also protecting the environment for which the public receives great service through higher education. Through academic research, the University has been instrumental in

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) (“*Order*”).

the development of new technology for which private and government agencies have gained great value. Within the same breath, the University seeks to maintain its rich history of providing a quality academic environment for which creativity, innovation and exploration may occur without the precedence of protected and privileged information being accessed freely and without limitations by sources external to the institution. Many of today's technologies would not have been realized without the University providing such an environment for education and research.

The University of North Carolina supports efforts for either an exemption for colleges and universities or recommends a special status with requirements that enhances existing procedures for which institutions of higher education works closely with law enforcement in gaining appropriate legal access to controlled private networks while ensuring the appropriate security and integrity of its information resources.

II. Discussion

A. Undefined criteria for network exemption

The Further Notice of Proposed Rulemaking (NPRM) dated October 23, 2005 which seeks to include institutions of higher education under the provisions of CALEA, appears to be in conflict with the original intent for which Congress enacted in 1994. CALEA (47 U.S.C. Sections 1001-1010). The University of North Carolina and its sixteen public constituent institutions are a public not-for-profit entity and as such, operate a private and managed network which does not provide the category of broadband services that are expected of a common carrier. The University campuses as well as Duke and Wake Forest universities are connected via the North Carolina Research and Education Network (NCREN which is a private, highly

reliable, robust, fiber-optic network providing high-speed Internet, video, audio, and data network services as well as access to national research networks (Internet2/Abilene and National LambdaRail), and resources of great academic importance. There is a great deal of ambiguity in whether educational networks are exempt from CALEA. The University of North Carolina strongly urges the Federal Communications Commission (FCC) to provide additional clarity and definition within the NPRM regarding this topic before mandating compliance.

B. Existing Procedures for Law Enforcement Assistance

The University has not experienced a single incident to date in which local, state or federal law enforcement agencies have been challenged or denied assistance in accessing data/information through appropriate legal procedures. Each of the University of North Carolina's sixteen constituent institutions have campus based law enforcement agencies and campus attorneys who are available and prepared to be of assistance to local, state and federal law enforcement officials in the event a campus issue needs to be addressed through legitimate legal means. Open and unimpeded access to campus networks counters important measures the University has put in place to ensure compliance with federal acts such as Family Education Rights and Privacy Act (FERPA) and Health Information Portability and Accountability Act (HIPAA).

Additionally, the University authorized and successfully completed a security vulnerability assessment of all its networks and is in the process of implementing standards based on industry best practices (ISO 17799 standards for Information Security). With security compliance deadlines and sporadic regulatory audits on the horizon, protecting proprietary information and establishing a strong security posture is becoming ever more challenging. The

bigger challenge for large public and private institutions with highly distributed information management environment is to make sure they don't lose sight of objectives, are able to effectively consolidate their regulatory requirements, and make sure that information security initiatives directly contribute to their overall operational strategy. To ensure these activities are properly coordinated, the University has established an oversight body (The UNC Information Security Council, ISC). The ISC will also be responsible for ensuring UNC compliance with valid, reasonable, and appropriately authorized requests by Federal agencies responsible for homeland security.

C. Implications of costs

The higher education professional organizations have attempted to quantify the cost implications of the proposed and assumed requirements. Based on these preliminary estimates, the costs to the institutions within the University of North Carolina could be in the tens of millions of dollars.

The University has and continues to experience significant budget shortfalls as a result of state cuts in education. CALEA compliance would result in funding being diverted from vital academic programming to support an infrastructure and architecture that has yet to have a particular precedence that would justify such a drastic shift in priority spending. Additionally, the proposed compliance date would require immediate procurement and acquisitions for an environment in which the specifications have yet to be defined. At the very least, such an approach should be completed over a phased period in which the environment's regularly scheduled upgrades are taken into consideration.

Unlike common carriers that are subject CALEA, the University is not able to simply pass on the costs to those utilizing the services. Incurring the estimated costs would surely result in higher tuition costs, fewer degree programs, fewer student services and activities, and ultimately, fewer students and faculty. The costs implications would be far reaching and have a negative impact on North Carolina's economy.

Conclusion

It is evident that the NPRM order presents a number of concerns for not only the University of North Carolina, but for higher education entities across the nation. The University of North Carolina respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA. At a minimum, a compliance date should not be mandated until the completion of a thorough investigation into the implications of the proposed action on higher education to include discussion of possible alternative measures that may provide outcomes that are less burdensome and mutually beneficial to law enforcement and the higher education community.

Respectfully submitted,

A handwritten signature in black ink that reads "Robyn R. Render". The signature is written in a cursive, flowing style.

Robyn R. Render
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